

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ALLIANCE HEALTH GROUP, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 1:06CV1267LG-JMR

**BRIDGING HEALTH OPTIONS, LLC
and DONALD J. BOOTH, M.D.**

DEFENDANTS

AND COUNTER-CLAIMS/ THIRD PARTY CLAIMS

**BRIDGING HEALTH OPTIONS, LLC
and DONALD J. BOOTH, M.D.**

**DEFENDANTS/
COUNTER PLAINTIFFS**

VS.

**ALLIANCE HEALTH GROUP, LLC,
DR. DAVID FALLANG AND LYNN FALLANG
AND JOHN DOE DEFENDANTS**

COUNTER DEFENDANTS

**MOTION TO STAY PROCEEDINGS FILED BY
DEFENDANTS/COUNTER PLAINTIFFS
BRIDGING HEALTH OPTIONS, LLC AND DONALD J. BOOTH, M.D.**

COME NOW Defendants/Counter Plaintiffs, Bridging Health Options, LLC (hereinafter “BHO”) and Donald J. Booth, M.D. (hereinafter “Dr. Booth”), by and through their attorneys, and file this their Motion to Stay Proceedings and in support thereof would show unto the Court the following:

I.

Plaintiff, Alliance Health Group, LLC (hereinafter “Alliance”) initiated this matter on December 20, 2006, by filing its Complaint. The allegations of the Complaint center upon an alleged breach of a Development Agreement for the preparation of a software program which was entered into by BHO and Alliance on August 15, 2003.

II.

Defendants herein have presently pending a Motion to Dismiss for Improper Venue based upon the terms of the forum selection clause contained in the Development Agreement which provides as follows:

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi and exclusive venue for any litigation related hereto shall occur in Harrison County, Mississippi.

III.

It is Defendants' assertion in their Motion to Dismiss for Improper Venue that the only appropriate forum for the litigation of this matter is in the state court of Harrison County, Mississippi. Thus, Defendants' Motion challenges the jurisdiction and venue of this Honorable Court. Accordingly, should Defendants' Motion be granted, it would result in the complete dismissal of the present litigation from the federal court system because there is no mechanism to transfer this case which originated in federal court from federal to state court. Both parties have fully briefed their respective positions before the district judge on this issue and it is ripe for disposition.

IV.

There is currently pending before the Court a telephonic case management conference set on June 14, 2007, as well as related requirements of the submission of confidential settlement memoranda, and issues concerning the scheduling of discovery tasks, the submission of initial disclosures, and the proposed Case Management Order. Defendants submit that adjudication of the Motion to Dismiss for Improper Venue would result in the complete dismissal of this action from this Court and render moot the efforts, time and expense of both parties and the Court in preparation

of the aforementioned submissions. To require this Court to expend judicial resources and time prior to an adjudication of Defendants' Motion to Dismiss would be a waste of judicial economy. Further, there will be no prejudice by staying the proceedings until Defendants' Motion to Dismiss is decided. Additionally, there is no discovery necessary to be conducted insofar as the issues raised in Defendants' Motion to Dismiss are concerned. To enlighten this Court on the details of the Defendants' Motion to Dismiss for Improper Venue, attached hereto as Exhibit "A" is the previously filed Memorandum Brief in Support of Motion to Dismiss for Improper Venue.

V.

The U.S. District Court for the Southern District of Mississippi has recently considered and granted a motion to stay all discovery proceedings where the Court had pending before it motions to dismiss filed by defendants on the basis of qualified immunity. *See Bynum v. City of Magee, Mississippi*, 2007 WL 913404 (S.D. Miss. 2007). In *Bynum*, District Judge Lee granted the defendants' motion to stay discovery until a ruling was made on the defendants' motions to dismiss as no discovery was necessary to assist in a determination of the defendants' motions on qualified immunity. Similarly, the present Defendants' Motion to Dismiss for Improper Venue based upon a forum selection clause has not and does not require discovery to assist the Court in a determination of the issues raised in the Motion to Dismiss. No party has requested or pursued discovery on this issue. Accordingly, a stay in the present matter is appropriate.

VI.

For the reasons stated herein, and because a ruling in favor of Defendants on their Motion to Dismiss for Improper Venue would result in the complete dismissal of this matter from the federal court system, Defendants respectfully request a stay of in the present proceedings until a determination is made upon Defendants' pending Motion to Dismiss for Improper Venue.

WHEREFORE, PREMISES CONSIDERED, Defendants/Counter-Plaintiffs, BHO and Dr. Booth, respectfully move this Honorable Court to grant a Stay of Proceedings herein until such time as Defendants' Motion to Dismiss for Improper Venue is finally adjudicated. Defendants/Counter-Plaintiffs further pray for any other and further relief they may be entitled to within the premises.

Respectfully submitted,

BRIDGING HEALTH OPTIONS, LLC and
DONALD J. BOOTH, M.D.

BY: PAGE, MANNINO, PERESICH
& McDERMOTT, P.L.L.C.

BY: /s/ Stephen G. Peresich
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CERTIFICATE OF SERVICE

I, STEPHEN G. PERESICH, of the law firm of Page, Mannino, Peresich & McDermott, P.L.L.C., do hereby certify that on March 27, 2007, I electronically filed the foregoing Defendants' Motion to Stay Proceedings Filed by Bridging Health Options, LLC and Donald J. Booth, M.D. with the Clerk of the Court using the ECF system which sent notification of such filing to the following: Ron A. Yarbrough, at the law offices of Brunini, Grantuam, Grower & Hewes, PLLC, 140 Trustmark Building, 248 East Capitol Street, Jackson, Mississippi, 39201 and by U.S. Mail to David C. Olson, at the law offices of Frost Brown Todd, LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio, 45202-4182.

This, the 6th day of June, 2007.

/s/ Stephen G. Peresich

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